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C O N F I D E N T I A L SECTION 01 OF 02 BANGKOK 002567

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E.O. 12958: DECL: 04/24/2016

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SUBJECT: COURTS LEAN TOWARD NULLIFICATION; TRT FIGHTS BACK

Classified By: Ambassador Ralph L. Boyce reason 1.4 (b) (d)

¶1. (C) SUMMARY: On May 1, a justice of the Central Administrative Court indicated that the April MP elections would likely be annulled. He expected a ruling on the key cases within a week to ten days. However, the ruling Thai Rak Thai party is marshaling its forces to oppose nullification. Even if they successfully beat the current odds and salvage this election, they may do themselves lasting damage with the voters -- defying the King, whose strong criticism of the elections started the courts on the path to nullification. TRT also foreshadowed a come-back for Thaksin, saying if the elections are nullified, Thaksin's promise to sit out a round is also off. END SUMMARY.

¶2. (C) Polcouns met May 1 with Vishnu Varunyou, Deputy Chief Justice of the Central Administrative Court. Vishnu discussed the status of about 10 lawsuits brought before the Administrative court concerning the conduct of the April MP elections. (The Central Administrative Court issued the injunction on April 28 forestalling the last round of the elections, and it has jurisdiction over several other cases. There are also several other cases filed in the Supreme Court and the Constitutional Court.) Although Vishnu stopped just short of stating openly that the elections would be annulled, he made clear that it was his expectation. "It's in the air," he said; everyone expects that the courts will annul the elections. Now, the courts just have to decide what reasoning they can use to support the decision once they formally reach it. Vishnu thought that the rulings on key cases would be issued within about a week to 10 days.

NO SHORTAGE OF CASES

¶3. (C) According to Vishnu, only three of the court cases before the Administrative court at this time could lead to the nullification of the elections. These were brought by the opposition Democrat Party, by the Law Society, and by NGOs. They each concern the original decree which dissolved the Parliament and set the date for the elections 37 days later. The law says that snap elections must be held within 60 days, but gives no minimum period. At the time the elections were called, there were many complaints that the 37 day deadline was too short to permit opposition parties to organize and campaign. The government countered that the elections had to be held quickly to permit the new government to be installed before the very important celebrations in June for the King's highly auspicious sixtieth anniversary on the throne. Once the opposition boycotted, this issue appeared to become moot, but it is back now with a vengeance.

¶4. (C) The other issues before the courts, including cases about permitting new candidates to register for the second and third rounds, and the re-positioning of the voting booths (which led to a lack of ballot secrecy) could not be grounds for annulling the elections. According to Vishnu, these could only be grounds for holding a re-vote with the same candidates, after correcting the problems the court would identify.

DISSOLVE TRT?

¶5. (C) The other hot case has been brought by the Democrat Party to the Constitutional Court. In that case, the Democrats repeat their allegation that high-ranking members of the ruling Thai Rak Thai (TRT) party paid microparties to register candidates so the TRT would not be the only candidate in many constituencies. Sole candidates had to win 20 percent of the total eligible vote, a bar too high in many districts in which TRT is unpopular. With an opponent, a simple majority of votes cast wins. The Democrats claim to have good evidence, including eye-witness testimony, implicating the Minister of Defense and other senior TRT officials. The Election Commission has already announced that at least one of the microparties that admitted falsifying documents to register candidates should be dissolved. The Democrats want the courts to find that TRT should also be dissolved. This seems a highly unlikely outcome, especially from the Constitutional Court, believed to lean toward TRT. However, it is difficult to rule anything out at this point.

JURISDICTION QUESTIONS

16. (C) Vishnu explained that it had been difficult for the courts to grapple with the problems of these elections in part because the Election Commission has very strong authority to conduct the voting as it sees fit. Both the 1997 Constitution and a 2003 Constitutional Court ruling give the EC a broad mandate that appears to preclude most juridical review of its decisions. Vishnu said that this was due to past experience, in which the courts had been ill-equipped to handle legal challenges to EC decisions, and had been unable to resolve issues in a timely fashion (a general problem for the courts here.) Therefore, the new constitution limited the courts' authority over the EC. Thus, the courts had ducked several cases brought earlier in the elections claiming they had no jurisdiction. This is the background to the King's repeated admonitions to the court in his speech last week: "I appeal to you to look into this issue carefully to see whether it involves the country's administration. Do your best. If you cannot discharge your duties, you have to resign..."

TRT FIGHTS BACK

17. (C) Illustrating the problem, the EC is filing a countersuit against the Administrative Court, claiming that the court has no jurisdiction to interfere with the EC's conduct of the elections. And it is just beginning to dawn on the ruling Thai Rak Thai party (TRT) that their 480 or so parliamentary seats may be in jeopardy. Several party members have been quoted in the press this week warning against nullification. A senior official reportedly said that if this happens, elected MPs should have the right to sue for compensation. "A candidate carries the 1.5 million baht (about USD40,000) per person campaign costs, so we should ask lawyers who we can sue and who takes responsibility for the damage." (Comment: Since most of the TRT candidates ran unopposed, one could ask why the campaign cost so much. End comment.) Another TRT MP threatened a TRT boycott of new elections. (Comment: unlikely. End comment.)

18. (SBU) TRT members have also raised questions about caretaker Prime Minister Thaksin's "political break." Deputy PM Chidchai told the press that, if the elections are annulled, it's a whole new ballgame, and Thaksin's promise to sit out one round could be reconsidered. Chidchai subsequently walked back these remarks, but other TRT officials have also raised this possibility. Caretaker Prime Minister Thaksin, who returned quietly from his international travel over the weekend, has so far been silent about all these questions.

COMMENT

19. (C) After the King's April 25 speech, the momentum was all behind the move to annul the elections, and the courts moved with surprising swiftness. TRT and its supporters are now gathering up their forces for a counterattack. They may still be able to salvage the elections, but this could be a losing strategy in the long run. The King's comments were balanced and avoided pointing the finger directly at any one player in the election drama. However, they made it clear that the King had grave concerns about the elections. TRT could suffer serious political damage if it openly defies the King and champions these elections, especially as the opposition has been quick to accept the King's recommendations and has said they will run in the replacement elections without any preconditions.
BOYCE